

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 12/19/11
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David W. Fiore, Pro Se,  
Plaintiff,

11Civ. 2264 (RJS)(DCF)

v.

**DECLARATION OF  
David W. Fiore**

VICTOR MANUEL MEDINA, ET AL.  
Defendants.

**FTCA REMEDY  
COMPLETION**

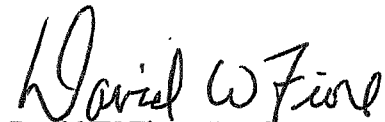
I, David W. Fiore, declare the following to be true and correct:

1. I was in custody of the Federal Bureau of Prison for over 8 (eight) years, as an Inmate starting in March of 2001, through and up to my release of December 2009.
2. That I have learned the inmate's process (rules) for filing and completing the Administrative Tort Claim ("SF-95s") pursuant to the Federal Tort Claims Act, "Title 28 C.F.R. Subpart – C Federal Tort Claims Act, §543.30 through §543.32."
3. On March 12, 2011, I submitted a Tort Claim to the Defendant SADOWSKI at the NERO, for 1,000,250.00 (one-million, two-hundred, fifty dollars and no cents) by certified United States Postal Service No. 70100780000131350291, see copy of Tort claim attached hereto as **Exhibit 1**.
4. On March 14, 2011, Defendant, SADOWSKI received my tort claim. See copy of confirmation attached hereto as **Exhibit 2**.
5. On May 9, 2011, Defendant, SADOWSKI denied my Tort Claim, No. TRT-NER-2011-03115, and stated;
  - (i) "According to Title 28, United States Code, Section 2401(b), 'A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing by certified or registered mail, or notice of final denial of the claim by the agency to which it was presented.'"

- (ii) See Exhibit 3, with copy of denial letter, copy of envelope denial letter arrived in, and USPS Track & Confirm proof that I did in fact accept this denial letter on May 13, 2011 in Providence RI, at 1:41pm.
6. On May 13, 2011 I mailed a response to Defendant, SADOWSKI by USPS Certified No. 70103090000002501123, with a copy of the Denial letter, stating:
- (i) "I am so glad to see that you continue to present false facts when dealing with inmates and prior inmate's filings to deny their claims. Thank you for the evidence you have provided that only proves further misconduct by you personally."
  - (ii) The denial letter by SADOWSKI is fraudulent and I specifically point this out to him; "In this statement you specifically underline the two year limitation on the claim; therefore, I will perceive this as your basis for denial. However, your agency received this claim On March 14, 2011, approximately one (1) month before the two (2) year limitation would apply. The actual date of the claim starts on May 6, 2009, which clearly falls within the time limitation of the United States Code, Section 2401(b), quoted by your denial letter." See Exhibit 4.
  - (iii) Defendant SADOWSKI received this response On May 16, 2011, at 10:58am; see copy of Track & Confirm attached hereto as **Exhibit 4**.
7. With this Declaration and proof of documented evidence I have now been able to prove Defendant SADOWSKI knowingly and intentionally, has and continues to deprive this former inmate of due process and equal protection by obfuscation; misdirection and not addressing the factual issues within a correctly filed Tort Claim to the appropriate Regional Office.
8. Defendant SADOWSKI has manipulated the Government's Data System that does not reflect the filed tort claim, which invalidates KENNETH BORK'S Declaration, wherein states;
- (i) "4. Although I have conducted an exhaustive search of all relevant MCC files and consulted the various Bureau of Prisons' Regional Offices' computerized tort claim database where additional SF-95s would have been located, these BOP files did not include any additional SF-95s filed by Plaintiff."
9. Defendant SADOWSKI has withheld this documentation in the hopes that this Plaintiff would not be able to defend the Government's Motion to Dismiss requesting and ORDER dismissing the complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

10. That I have numerous filing in my possession to the Defendant SADOWSKI of Administrative Remedies that will show SADOWSKI'S pattern of intentional misconduct and negligence to properly address these remedies.

I, declare, under penalty of perjury, pursuant to 28 USC §1746 that the foregoing is true and correct to best of my knowledge, belief and supported by documented evidence.



David W Fiore, Pro Se  
P.O. Box 3251-09  
Providence, RI 02909  
(401) 261-6983

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<b>CLAIM FOR DAMAGE, INJURY, OR DEATH</b>		<b>INSTRUCTIONS:</b> Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		<b>FORM APPROVED</b> OMB NO. 1105-0008	
1. Submit To Appropriate Federal Agency: Henry J. Sadowski NERO Counsel US Customs House - 7th Fl. 2nd & Chestnut Street Philadelphia PA. 19106			2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, Street, City, State and Zip Code) David W. Fiore Pro Se P.O. Box 3251-09 Prov. RI 02909		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH 11-20-1966	5. MARITAL STATUS Divorced	6. DATE AND DAY OF ACCIDENT May 6 2009	7. TIME (A.M. OR P.M.) 5:00 PM	
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary.) I have suffered an injury (monetary) due to FBOP staff (Central/NERO/Otisville) for negligence concerning Incident Report No. 1865757. I lost property upon my illegal placement into cell. Staff agreed to expunge IR No 1865757 upon my signing a waiver of Claim for the missing property. The property was not found I was given 30 Confiscated Items and told the IR would be expunged, it was not and now cost of litigation damages.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). SAME					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See Instructions on reverse side.) NEVER found.					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT. Due to Staff negligence I have had to pay cost of litigation in order to address this negligence concerning IR No 1865757 false accusations.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
N/A		N/A			
12. (See instructions on reverse.) AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE \$ 250.00	12b. PERSONAL INJURY 1,000,000.00	12c. WRONGFUL DEATH N/A	12d. TOTAL (Failure to specify may cause forfeiture of your rights.) 1,000,250.00		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.) <i>David W. Fiore</i>			13b. Phone number of person signing form 401 261 6983	14. DATE OF SIGNATURE 3-12-2011	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM  The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729.)			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS  Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)		

## INSURANCE COVERAGE

When subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

Do you carry accident insurance? ☒ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

Medicare Government  
Medicaid State

SSDI insurance

N/A

16. Have you filed a claim on your insurance carrier in this instance, and if so, is it full coverage or deductible?

NO

17. If deductible, state amount.

N/A

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts.)

N/A

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☒ No

## INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item #12 of this form.

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

## PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. Authority: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. Principal Purpose: The information requested is to be used in evaluating claims.  
C. Routine User: See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.  
D. Effect of Failure to Respond: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

## PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.

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U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

**VIA CERTIFIED MAIL/RETURN RECEIPT**

U.S. Custom House  
2nd & Chestnut Streets - 7th Floor  
Philadelphia, PA. 19106

May 9, 2011

David Fiore  
Reg. No. 02530-049  
P. O. Box 2251-09  
Providence, RI 02909

Re: Administrative Tort Claim Received March 14, 2011  
Claim No. TRI-NER-2011-03115

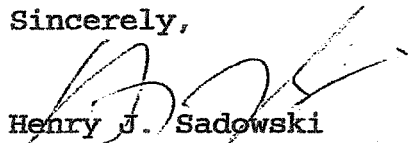
Dear Mr. Fiore:

This office is in receipt of your administrative tort claim wherein you seek to be compensated in the amount of \$1,000,250.00 for an alleged personal injury you suffered at FCI Otisville on or about May 6, 2009.

After careful review of this claim, your claim is being denied, because you have failed to submit your administrative claim within the time restrictions contained in the applicable statutes and federal regulations.

According to Title 28, United States Code, Section 2401(b), "A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing by certified or registered mail, or notice of final denial of the claim by the agency to which it was presented."

Sincerely,

  
Henry J. Sadowski  
Regional Counsel

cc: Terry Billingsley, Warden, FCI Otisville

U.S. Department of Justice  
Federal Bureau of Prisons  
Northeast Regional Office  
U.S. Custom House - 7th Floor  
2nd and Chestnut Streets  
Philadelphia, PA 19106  
Official Business

TOP OF ENVELOPE TO THE RIGHT  
ADDRESS FOLD AT DOTTED LINE  
**CERTIFIED MAIL**



7006 3230 0001 8271 5090

02 12 09  
09:55:10  
0018080720 MAY 18 2011  
MAILED FROM ZIP CODE 19106

3251-09

5-12-11

correct box

0250555555





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United States Postal Service



United States Postal Service

4

David W Fiore  
P.O. Box 3251-09  
Providence RI 02909

May 13, 2011

HENRY J. SADOWSKI  
NERO Counsel  
US Customs House – 7<sup>th</sup> Floor  
2<sup>nd</sup> & Chestnut Streets  
Philadelphia, PA 19106

7010 3090 0000 0250 1123

RE: TRT-NER-2011-03115

Dear Mr., SADOWSKI:

I am so glad to see that you continue to present false facts when dealing with inmates and prior inmate's filings to deny their claims. Thank you for the evidence you have provided that only proves further misconduct by you personally.

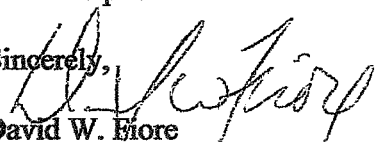
The administrative claim TRT-NER-2011-03115 you received March 14, 2011, see attached copy of your certified mailing dated May 9, 2011, states:

According to Title 28, United States Code Section 2401(b), A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing by certified or registered mail, or notice of final denial of the claim by the agency to which it was presented.

In this statement you specifically under line the two year limitation on a claim; therefore, I will perceive this as you basis for the denial. However, your agency received this claim on March 14, 2011, approximately one (1) month before the two (2) year limitation would apply. The actual date of the claim starts on May 6, 2009, which clearly falls within the time limitation of the United States Code, Section 2401(b), quoted in your denial letter.

Again, you have failed to perform your fiduciary duty as a servant of the public trust.

Sincerely,

  
David W. Fiore  
401.261.6983

File: 70103090000002501123

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Sent To: Henry J. Sadowski  
 Street, Apt. No.,  
 or PO Box No. James Lawrence 7th St. Phil & Chestnut Sts  
 City, State, ZIP+4 Philadelphia PA 19106

PS Form 3800, August 2005. See Reverse for Instructions.

U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

U.S. Custom House  
 2nd & Chestnut Streets - 7<sup>th</sup> Floor  
 Philadelphia, PA. 19106

Reg. No. 02530-049  
 P. O. Box 2251-09  
 Providence, RI 02909

Re: Administrative Tort Claim Received March 14, 2011  
 Claim No. ~~TRT-NER-2011-03115~~

Dear Mr. Fiore:

This office is in receipt of your administrative tort claim wherein you seek to be compensated in the amount of \$1,000,250.00 for an alleged personal injury you suffered at FCI Otisville on or about May 6, 2009.

After careful review of this claim, your claim is being denied, because you have failed to submit your administrative claim within the time restrictions contained in the applicable statutes and federal regulations.

According to Title 28, United States Code, Section 2401(b), "A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing by certified or registered mail, or notice of final denial of the claim by the agency to which it was presented."

Sincerely,

*[Signature]*  
 Henry J. Sadowski  
 Regional Counsel

cc: Terry Billingsley, Warden, FCI Otisville





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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

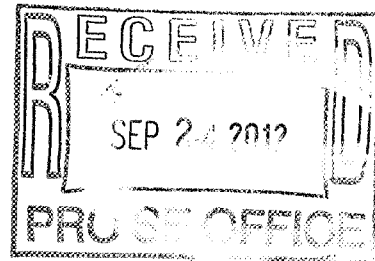
MEMORANDUM

Pro Se Office

To: The Honorable Richard J. Sullivan  
From: J. Hodges, Pro Se Clerk, x0177  
Date: 12/20/11  
Re: Fiore vs. Victor Manuel Medina, et al, No. 11 Civ. 2264 (RJS)

The attached document, which was received by this Office on 12/19/11, has been submitted to the Court for filing. The document is deficient as indicated below. Instead of forwarding the document to the docketing unit, I am forwarding it to you for your consideration. See Fed. R. Civ. P. 5(d)(2)(B), (4). Please return this memorandum with the attached papers to this Office, indicating at the bottom what action should be taken.

- ( ) No original signature.  
(X) No affirmation of service/proof of service.  
( ) The request is in the form of a letter.  
( ) Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



(X) ACCEPT FOR FILING

( ) RETURN TO PRO SE LITIGANT

Comments:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature]  
United States District Judge

\_\_\_\_\_  
United States Magistrate Judge

Dated: 9/22/12